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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36086]

Dakota Southern Railway Company—Modified Certificate of Public Convenience and Necessity—Yankton, Bon Homme, and Charles Mix Counties, S.D.

On December 29, 2016, Dakota Southern Railway Company (DSRC), a Class III rail carrier, filed a notice for a modified certificate of public convenience and necessity, pursuant to 49 C.F.R. pt. 1150 subpart C—Modified Certificate of Public Convenience and Necessity, to lease and operate approximately 54.5 miles of rail line (the Line) owned by the State of South Dakota (the State). The Line is located between MP 0.0 (also known as Engineer's Survey Station Number 00+00) at the intersection of the North Sioux City to Mitchell line and extending in a westerly direction to a point of termination at MP 54.5¹ (also known as Engineer's Survey Station Number 1707+17), in and through the Counties of Yankton, Bon Homme, and Charles Mix, S.D.

DSRC states that the entire rail line from Napa, S.D. (MP 0.0) to Platte, S.D. (MP 83.3), which includes the Line, was authorized for abandonment in 1980 by the United States District Court for the Northern District of Illinois following the issuance of a report by the Interstate Commerce Commission (ICC) recommending abandonment.

¹ The verified notice states that the Line, or service on it, will terminate at MP 54.4 (DSRC Notice 3, 5) and MP 54.5 (DSRC Notice 1), while the lease agreement between DSRC and the State specifies that service will terminate at MP 54.5. (DSRC Notice Ex. C at ¶ A.)

See In re Chi., Milwaukee, St. Paul & Pac. R.R., No 77 B 8999 (N.D. Ill. June 2, 1980, Order 342A); Richard B. Ogilvie, Tr. of the Prop. of Chi., Milwaukee, St. Paul & Pac. R.R.—Aban.—in S.D., Iowa & Neb., AB-7 (Sub-No. 88) (ICC served May 14, 1980).

According to DSRC, although authorized for abandonment, the entire line was not abandoned but instead acquired by the State of South Dakota in 1980. DSRC states that, since 1980, the entire line, or segments thereof, have been leased and subleased to various entities, and various entities have held ICC- or STB-authorized operating rights over the entire line or segments thereof. DSRC further states that, in 2007, the State railbanked the segment between Ravinia, S.D. (MP 54.4)² and Platte, S.D. (MP 83.3). See S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate, FD 31874 (STB served July 17, 2007). At MP 0.0, the Line has interchange capability with BNSF Railway Company (direct access and haulage agent).

Effective December 1, 2016, DSRC leased the Line from the South Dakota Department of Transportation and agreed to assume all common carrier obligations related to the operation of the Line. (See DSRC Notice Ex. C at ¶¶ 3, 9.) The lease calls for commencement of the requested service no later than December 31, 2016. (Id. at ¶ 9.) The term of the lease is 10 years from the effective date, unless terminated earlier pursuant to the terms of the agreement. (Id. at ¶ 22.)

² The segment of line railbanked by the State begins at MP 54.5, not MP 54.4 as stated by DSRC in its filing. See S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate, FD 31874, slip op. at 1 (STB served July 17, 2007).

The Line qualifies for a modified certificate of public convenience and necessity.

See Common Carrier Status of States, State Agencies & Instrumentalities & Political Subdivisions, FD 28990F (ICC served July 16, 1981) and 49 C.F.R. § 1150.22.

DSRC states that no subsidy is involved and that there are no preconditions for shippers to meet to receive rail service. DSRC has also provided a certificate of liability insurance for commercial general liability and excess railroad liability insurance.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement at 425 Third Street, S.W., Suite 1000, Washington, DC 20024; and on the American Short Line and Regional Railroad Association at 50 F Street, N.W., Suite 7020, Washington, DC 20001.

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Decided: January 18, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.